

Appl. No. 10/626,947
Atty. Docket No. 9117M
Amdt. dated April 6, 2006
Reply to Office Action of February 6, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1, 5 – 10, and 12-13 are pending in the present application. No additional claims fee is believed to be due.

Claims 2-4 and 10 are canceled without prejudice.

Claim 1 has been amended to incorporate the language from Claim 11. Support for the amendment is found at page 6, lines 17-21 of the specification.

New Claim 12 has been added. Support for this amendment is found at page 4, lines 3-4 of the specification and in the examples. New Claim 13 has also been added. Support for this amendment is found in all of the examples.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, First Paragraph

The Office Action states that Claims 1-10 do not comply with the written description requirement and is a “new matter” rejection. Applicants assert that the claims have been amended and that this rejection is not longer applicable.

Rejection Under 35 USC §112, First Paragraph

The Office Action states that Claim 11 is rejected as being indefinite. Applicants assert that Claim 11 has been cancelled and that the language from Claim 11 that is incorporated into Claim 1 is not indefinite.

Rejection Under 35 USC §103(a)

Claims 1-11 have been rejected under 35 USC §103(a) as being unpatentable over Stier in view of Wong. Applicants respectfully traverse this rejection. Stier and Wong, either separately or together, do not teach or suggest all of the claim limitations of the claims as amended, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03).

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As amended, Claim 1 now requires that 0.6 to 1% of colorant particles are in the first phase, 0.2 to 0.5% of colorant particles are in the second phase, and the first phase and the second phase have contrasting colors. The definition for contrasting colors is found on page 3, lines 3-7. It states that a contrasting color can be from phases that have at least 2 different shades or hues of the same color as long as these different shades or hues give a striped appearance. New claim 13 requires that the colorant particles be of the same color. Because it is required that the colorant particles are added at different levels (Claim 1), a different shade will result even though the same colorant particles (Claim 13) are used. Claim 1 now requires that a specific amount of colorant particles be added to each phase. The amounts are more than a statistical difference in each phase.

Wong discloses in example I a compositions with 0.5% colorant particles in each phase and in example II 0.5% colorant particles in one phase and no colorant particles in the other phase. Wong does not teach or suggest any examples with a different level of colorant particles in each phase. And more specifically, Wong does not disclose the specific requirement of 0.6 to 1% of colorant particles in the first phase, 0.2 to 0.5% of colorant particles in the second phase, and that the first phase and the second phase having contrasting colors. Therefore, one having ordinary skill in the art would not have been motivated by the teachings or suggestions in Wong, alone or in combination with Stier, to develop the present invention.

The office action states that it would have been obvious to have varied those amounts [colorant particles] to optimize the contrast in color sought by the prior art. Applicants assert that it would not have been obvious to select the particular colorant particle levels required in the present invention based on the teachings of Stier and Wong. Wong discloses very typical examples of the prior art wherein one phase contains a colorant particle but the other phase either contains the same amount of colorant particle or does not contain any colorant particle. Applicants have found that a colorant particle in a different amount in each phase will provide the striped appearance desired by the present invention. There is no teaching or suggestion in Wong that a striped dentifrice product with different levels of colorants in each phase to create a striped appearance would be desired. Without improper hindsight, one having ordinary skill in the art would not have been motivated by the teachings in Wong and Stier to develop the present invention. Therefore, Applicants request withdraw of the obviousness rejection.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 5 – 10, and 12-13 is respectfully requested.

Respectfully submitted,

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